

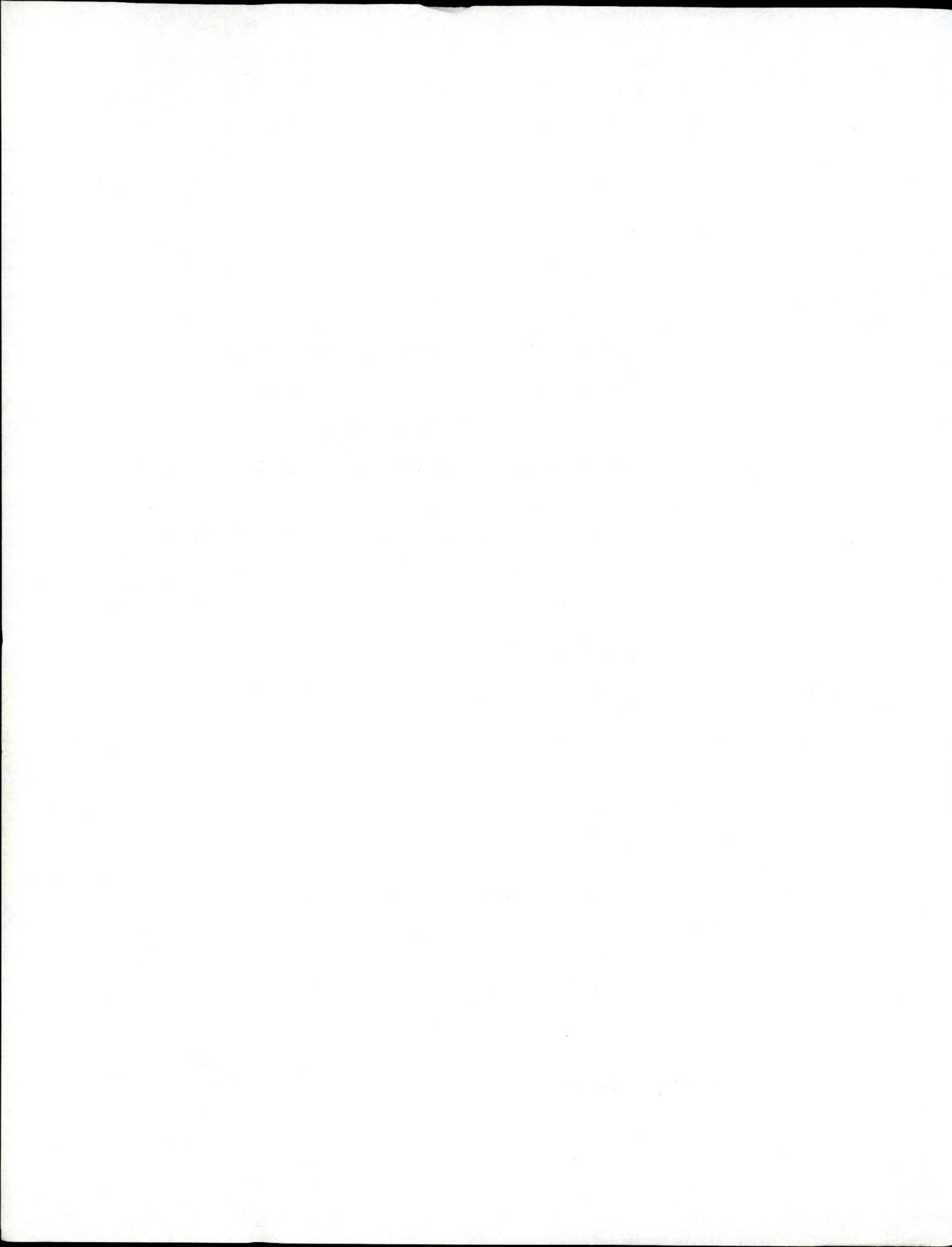
JUSTICES (AMENDMENT) BILL, 1979

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are—

- (a) to extend the ex parte procedure available under the Justices Act, 1902, to all prosecutions brought by local councils for summary offences (Schedule 1 (1));
 - (b) to make special provision with respect to an appeal by way of stated case from a determination of 2 or more Justices where 1 or more of those Justices ceases to hold office or is unable to attend to the duties of his office (Schedule 1 (2), (3)); and
 - (c) to amend the Justices Act, 1902, by way of statute law revision (Schedule 2).
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JUSTICES (AMENDMENT) BILL, 1979

No. , 1979.

A BILL FOR

An Act to amend the Justices Act, 1902, with respect to prosecutions brought by local councils and to stated cases, and for the purpose of statute law revision.

[Mr F. J. WALKER—27 *November*, 1979.]

Justices (Amendment).

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO THE JUSTICES ACT, 1902.

(1) Section 75B (2) (a)—

Omit the paragraph, insert instead :—

- 5 (a) an information has been laid under this Division by a member of the police force or a public officer for an offence punishable summarily before a Justice or Justices;

(2) Section 104B—

10 After section 104A, insert :—

104B. (1) In this section, “office” means—

- 15 (a) in relation to a Justice other than a Stipendiary Magistrate or a licensing magistrate under the Liquor Act, 1912—the office of a Justice of the Peace;
- (b) in relation to a Stipendiary Magistrate—the office of a Stipendiary Magistrate; or
- 20 (c) in relation to a licensing magistrate under the Liquor Act, 1912—the office of such a licensing magistrate.

Provisions for stating a case where one of several Justices dies, retires, etc.

25 (2) Where, after making a determination in any proceedings held before 2 or more Justices (in this section referred to as the “original Justices”), 1 or more of those Justices has ceased to hold office by reason of his death or otherwise or is unable by reason of absence or illness to attend to the duties of his office and—

- 30 (a) at the time when he so ceased to hold office or so became unable to attend to his duties, the original Justices had not stated and signed a case in respect of that determination pursuant to an application made to them before that time in accordance with section 101 (1)—the remaining Justices may state and sign the case; or

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

5 (b) an application had not been made to the original Justices before that time in accordance with section 101 (1) to state and sign a case in respect of that determination—an application may be made to the remaining Justices in accordance with section 101 (1) to state and sign the case and those remaining Justices may state and sign the case.

10 (3) Where a case has been stated and signed under any of the provisions of this Part, the Supreme Court shall hear and determine the question or questions of law on such case and shall exercise and perform such of its powers and duties under this Part in relation to the case as it deems proper, notwithstanding that—

15 (a) one or more of the Justices who made the determination in respect of which the case was stated and signed; or

20 (b) one or more of the Justices by whom the case was stated and signed,

has ceased to hold office by reason of death or otherwise or is unable to attend to the duties of his office.

25 (4) Where the Supreme Court determines that a matter should be remitted or a case should be sent back for amendment in accordance with section 106 (1), and the case was stated and signed—

(a) by the remaining Justices in accordance with subsection (2); or

30 (b) by 2 or more Justices, and 1 or more of those Justices has, since stating and signing the case, ceased to hold office by reason of his death or otherwise or is unable by reason of absence or illness to attend to the duties of his office,

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

5 the Supreme Court shall remit the matter, or send the case back for amendment, to the remaining Justices and those remaining Justices shall, subject to subsection (5), deal with the matter remitted to them or amend the case referred back to them.

10 (5) Where the Supreme Court remits a matter in accordance with subsection (4) but the number of remaining Justices is not sufficient to enable the matter to be dealt with by the number of Justices required by law—

15 (a) the remaining Justices shall not deal with the matter but shall apply to the prescribed person to nominate the appropriate number of additional Justices to enable the matter to be dealt with in accordance with law; and

20 (b) when the appropriate number of additional Justices is so nominated, the matter shall be dealt with by the remaining Justices and the Justices so nominated.

(6) A Justice nominated under subsection (5) may do all acts and things necessary under this Part for or in connection with dealing with the matter remitted as if he were one of the original Justices, and for that purpose—

25 (a) he may read as evidence for either party the depositions of all witnesses in the proceedings; and

30 (b) he and the remaining Justices may grant leave for further evidence to be called by any of the parties to those proceedings.

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

(7) A reference in subsections (5), (8) and (9) to the prescribed person shall be deemed to be a reference—

- 5 (a) except where the original Justices were members of a licensing court constituted under the Liquor Act, 1912—to the chairman of the bench of Stipendiary Magistrates, or the person for the time being acting as that chairman; or
- 10 (b) where the original Justices were members of such a court—to the chairman of licensing courts appointed under that Act, or the person for the time being acting as that chairman.

15 (8) The prescribed person shall not be bound to nominate a Justice under subsection (5) where the original Justice had become unable by reason of absence or illness to attend to the duties of his office unless, in the opinion of the prescribed person, it is necessary in the interests of the parties to the proceedings for him to do so.

20 (9) The prescribed person may nominate himself under subsection (5).

(10) A licensing court under the Liquor Act, 1912, shall be deemed to be properly constituted notwithstanding that—

- 25 (a) a member of the court has been nominated under subsection (5); or
- 30 (b) a licensing magistrate under that Act has been so nominated in the place of a Stipendiary Magistrate or a Stipendiary Magistrate has been so nominated in the place of such a licensing magistrate.

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

5 (11) The provisions of this section apply whether
an original Justice died or otherwise ceased to hold office,
or became unable to attend to the duties of his office,
before, on or after the date of assent to the Justices
(Amendment) Act, 1979.

(3) Section 154 (1B)—

After “section 104A”, insert “or 104B”.

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SCHEDULE 2.

Sec. 4

AMENDMENTS TO THE JUSTICES ACT, 1902, BY WAY OF STATUTE
LAW REVISION.

(1) Section 3 (1), definition of “Prescribed”—

Omit the definition.

15 (2) Section 7A (5)—

Omit “subsections (2) and (3) of section 36 of the Public
Service Act, 1902,”, insert instead “section 64 (2) and (3)
of the Public Service Act, 1979,”.

(3) Section 51A (4) (b)—

20 Omit “as amended by subsequent Acts,”.

Act No. , 1979.

Justices (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902, BY WAY OF STATUTE
LAW REVISION—*continued.*

- (4) Section 63 (2A) (a)—
5 Omit “Public Service Act, 1902”, insert instead “Public
Service Act, 1979”.
- (5) Section 75B (1) (a)—
Omit “Public Service Act, 1902”, insert instead “Public
Service Act, 1979”.
- 10 (6) Section 81 (3) (a)—
Omit “as amended by subsequent Acts.”.
- (7) Section 90 (2)—
Omit “-1933”.
- (8) (a) Section 104A (1), definition of “Magistrate”—
15 Omit “, as amended by subsequent Acts” wherever
occurring.
- (b) Section 104A (10)—
Omit “, as amended by subsequent Acts” wherever
occurring.
- 20 (9) Section 122 (5)—
After “accused person”, insert “who is in custody”.

Justices (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902, BY WAY OF STATUTE
LAW REVISION—*continued.*

(10) (a) Section 154 (1A) (a) (i)—

5 Omit “-1954”.

(b) Section 154 (2)—

Omit the subsection, insert instead :—

10 (2) Section 41 of the Interpretation Act, 1897,
applies in respect of a regulation as if this Act had
been passed after the commencement of the
Interpretation (Amendment) Act, 1969.

BY AUTHORITY

WEST. GOVERNMENT PRINTER, NEW SOUTH WALES—1979

[24c]

Section 14 (b)

Section 14 (c)

Section 14 (d)

Section 14 (e)

Section 14 (f)

Section 14 (g)

Section 14 (h)

Section 14 (i)

Section 14 (j)

Section 14 (k)

JUSTICES (AMENDMENT) ACT, 1979, No. 178

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 178, 1979.

An Act to amend the Justices Act, 1902, with respect to prosecutions brought by local councils and to stated cases, and for the purpose of statute law revision. [Assented to, 14th December, 1979.]

Justices (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title. **1.** This Act may be cited as the "Justices (Amendment) Act, 1979".

Commence- **2.** (1) Except as provided in subsection (2), this Act shall
ment. commence on the date of assent to this Act.

(2) Section 4, in its application to Schedule 2 (9), and Schedule 2 (9) shall commence or shall be deemed to have commenced, as the case may be, on the day appointed and notified under section 2 (2) of the Bail Act, 1978.

Schedules. **3.** This Act contains the following Schedules :—

SCHEDULE 1.—AMENDMENTS TO THE JUSTICES ACT, 1902.

SCHEDULE 2.—AMENDMENTS TO THE JUSTICES ACT, 1902,
BY WAY OF STATUTE LAW REVISION.

Amendment **4.** The Justices Act, 1902, is amended in the manner set forth
of Act No. in Schedules 1 and 2.
27, 1902.

Justices (Amendment).

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO THE JUSTICES ACT, 1902.

(1) Section 75B (2) (a)—

Omit the paragraph, insert instead :—

- (a) an information has been laid under this Division by a member of the police force or a public officer for an offence punishable summarily before a Justice or Justices;

(2) Section 104B—

After section 104A, insert :—

104B. (1) In this section, “office” means—

- (a) in relation to a Justice other than a Stipendiary Magistrate or a licensing magistrate under the Liquor Act, 1912—the office of a Justice of the Peace;
- (b) in relation to a Stipendiary Magistrate—the office of a Stipendiary Magistrate; or
- (c) in relation to a licensing magistrate under the Liquor Act, 1912—the office of such a licensing magistrate.

Provisions
for stating
a case
where one
of several
Justices
dies,
retires,
etc.

(2) Where, after making a determination in any proceedings held before 2 or more Justices (in this section referred to as the “original Justices”), 1 or more of those Justices has ceased to hold office by reason of his death or otherwise or is unable by reason of absence or illness to attend to the duties of his office and—

- (a) at the time when he so ceased to hold office or so became unable to attend to his duties, the original Justices had not stated and signed a case in respect of that determination pursuant to an application made to them before that time in accordance with section 101 (1)—the remaining Justices may state and sign the case; or

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

- (b) an application had not been made to the original Justices before that time in accordance with section 101 (1) to state and sign a case in respect of that determination—an application may be made to the remaining Justices in accordance with section 101 (1) to state and sign the case and those remaining Justices may state and sign the case.

(3) Where a case has been stated and signed under any of the provisions of this Part, the Supreme Court shall hear and determine the question or questions of law on such case and shall exercise and perform such of its powers and duties under this Part in relation to the case as it deems proper, notwithstanding that—

- (a) one or more of the Justices who made the determination in respect of which the case was stated and signed; or
- (b) one or more of the Justices by whom the case was stated and signed,

has ceased to hold office by reason of death or otherwise or is unable to attend to the duties of his office.

(4) Where the Supreme Court determines that a matter should be remitted or a case should be sent back for amendment in accordance with section 106 (1), and the case was stated and signed—

- (a) by the remaining Justices in accordance with subsection (2); or
- (b) by 2 or more Justices, and 1 or more of those Justices has, since stating and signing the case, ceased to hold office by reason of his death or otherwise or is unable by reason of absence or illness to attend to the duties of his office,

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

the Supreme Court shall remit the matter, or send the case back for amendment, to the remaining Justices and those remaining Justices shall, subject to subsection (5), deal with the matter remitted to them or amend the case referred back to them.

(5) Where the Supreme Court remits a matter in accordance with subsection (4) but the number of remaining Justices is not sufficient to enable the matter to be dealt with by the number of Justices required by law—

- (a) the remaining Justices shall not deal with the matter but shall apply to the prescribed person to nominate the appropriate number of additional Justices to enable the matter to be dealt with in accordance with law; and
- (b) when the appropriate number of additional Justices is so nominated, the matter shall be dealt with by the remaining Justices and the Justices so nominated.

(6) A Justice nominated under subsection (5) may do all acts and things necessary under this Part for or in connection with dealing with the matter remitted as if he were one of the original Justices, and for that purpose—

- (a) he may read as evidence for either party the depositions of all witnesses in the proceedings; and
- (b) he and the remaining Justices may grant leave for further evidence to be called by any of the parties to those proceedings.

Justices (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

(7) A reference in subsections (5), (8) and (9) to the prescribed person shall be deemed to be a reference—

- (a) except where the original Justices were members of a licensing court constituted under the Liquor Act, 1912—to the chairman of the bench of Stipendiary Magistrates, or the person for the time being acting as that chairman; or
- (b) where the original Justices were members of such a court—to the chairman of licensing courts appointed under that Act, or the person for the time being acting as that chairman.

(8) The prescribed person shall not be bound to nominate a Justice under subsection (5) where the original Justice had become unable by reason of absence or illness to attend to the duties of his office unless, in the opinion of the prescribed person, it is necessary in the interests of the parties to the proceedings for him to do so.

(9) The prescribed person may nominate himself under subsection (5).

(10) A licensing court under the Liquor Act, 1912, shall be deemed to be properly constituted notwithstanding that—

- (a) a member of the court has been nominated under subsection (5); or
- (b) a licensing magistrate under that Act has been so nominated in the place of a Stipendiary Magistrate or a Stipendiary Magistrate has been so nominated in the place of such a licensing magistrate.

Justices (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902—*continued.*

(11) The provisions of this section apply whether an original Justice died or otherwise ceased to hold office, or became unable to attend to the duties of his office, before, on or after the date of assent to the Justices (Amendment) Act, 1979.

(3) Section 154 (1B)—

After "section 104A", insert "or 104B".

SCHEDULE 2.

Sec. 4.

AMENDMENTS TO THE JUSTICES ACT, 1902, BY WAY OF STATUTE
LAW REVISION.

(1) Section 3 (1), definition of "Prescribed"—

Omit the definition.

(2) Section 7A (5)—

Omit "subsections (2) and (3) of section 36 of the Public Service Act, 1902," insert instead "section 64 (2) and (3) of the Public Service Act, 1979,".

(3) Section 51A (4) (b)—

Omit "as amended by subsequent Acts,".

Justices (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE JUSTICES ACT, 1902, BY WAY OF STATUTE
LAW REVISION—*continued.*

(4) Section 63 (2A) (a)—

Omit “Public Service Act, 1902”, insert instead “Public Service Act, 1979”.

(5) Section 75B (1) (a)—

Omit “Public Service Act, 1902”, insert instead “Public Service Act, 1979”.

(6) Section 81 (3) (a)—

Omit “as amended by subsequent Acts”.

(7) Section 90 (2)—

Omit “-1933”.

(8) (a) Section 104A (1), definition of “Magistrate”—

Omit “, as amended by subsequent Acts” wherever occurring.

(b) Section 104A (10)—

Omit “, as amended by subsequent Acts” wherever occurring.

(9) Section 122 (5)—

After “accused person”, insert “who is in custody”.

Justices (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE JUSTICES ACT, 1902, BY WAY OF STATUTE
LAW REVISION—*continued.*

(10) (a) Section 154 (1A) (a) (i)—

Omit “-1954”.

(b) Section 154 (2)—

Omit the subsection, insert instead :—

(2) Section 41 of the Interpretation Act, 1897,
applies in respect of a regulation as if this Act had
been passed after the commencement of the
Interpretation (Amendment) Act, 1969.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 14th December, 1979.*





